

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

THE UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
DONALD R. ONDRAK, d/b/a)	
DON ONDRAK PC)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, United States of America, for its complaint against Defendant Donald R. Ondrak, doing business as Don Ondrak PC, states as follows:

Nature of the Action

1. The United States brings this complaint pursuant to 26 U.S.C. §§ 7401, 7402(a), 7407 and 7408 of the Internal Revenue Code (“I.R.C.”) to enjoin Donald R. Ondrak, individually or doing business as Don Ondrak PC (collectively “Ondrak”), and anyone acting in concert with him from directly or indirectly:

- a. Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself;
- b. Appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- c. Preparing or filing, or assisting in the preparation or filing of tax returns or other related forms or documents for others;

- d. Filing (or helping or soliciting others to file) tax returns for others through the Internal Revenue Service E-File program or any other IRS service or program by which one electronically files tax returns;
- e. Seeking permission or authorization (or helping or soliciting others to seek permission or authorization) to file tax returns for others through the Internal Revenue Service E-File program or any other IRS service or program by which one electronically files tax returns;
- f. Instructing or advising customers, or assisting in the instruction or advice to customers to understate their federal tax liabilities;
- g. Engaging in any activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, 6701, or any other penalty provision in the Internal Revenue Code;
- h. Engaging in conduct designed or intended to, or having the effect of, obstructing or delaying any Internal Revenue Service investigation or audit; and
- i. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

Authorization

2. This action for injunctive relief is brought at the request of the Chief Counsel of the Internal Revenue Service (“IRS”), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7402 and 7408.

Jurisdiction and Venue

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1340 and 1345, and by 26 U.S.C. §§ 7402(a) and 7408.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because Ondrak resides in this judicial district and a substantial part of the events giving rise to this suit took place in this district.

5. Ondrak does business in this district as Don Ondrak PC, located at 201 W. 9th Street, Lexington, NE 68850. Ondrak resides at 1511 Liberty Drive, Lexington, NE 68850.

Background Facts

6. Ondrak is a certified public accountant (“CPA”) licensed in Nebraska, and is a compensated federal income tax preparer. He holds a Bachelor of Science degree in Business Administration with an emphasis in Accounting from Kearney State College. Ondrak became a CPA in 1982.

7. From 1977 to 1983, Ondrak worked for at least four different Nebraska accounting firms in the areas of Tax Accounting and Cost Accounting. In 1983, Ondrak started his own accounting firm, which currently operates under the name Don Ondrak PC. Ondrak is solely responsible for the federal income tax returns prepared at his firm.

8. Ondrak’s client-base primarily is located in west-central Nebraska. Many of Ondrak’s clients are self-employed and/or are small business owners who conduct their business through one or more corporate entities. Ondrak’s clients typically rely on him to prepare and file their personal, business and payroll tax returns.

9. Over the years, Ondrak has devised numerous improper tax schemes as a means of reducing his clients’ reported tax liability. To avoid detection by the IRS, Ondrak has modified his schemes or concocted entirely new schemes to avoid detection, knowing that it sometimes takes the IRS considerable time to detect a tax-fraud scheme and pursue tax preparers who use it.

10. As detailed more fully below, since at least 2004, Ondrak has employed numerous blatantly fraudulent tax schemes to understate his clients’ tax liability. These fraudulent schemes

include, but are not limited to, under-reporting income, overstating expenses, deducting personal items as a purported business expense, creating sham transactions between related parties and entities, misclassifying compensation as “contractor” rather than “employee” and creating bogus W-2s that under-report actual wages paid.

Ondrak’s Fraudulent Tax Preparation Activities

11. The IRS examined 400 federal returns prepared by Ondrak for the tax years 2004, 2005, 2006 and 2007. In so doing, the IRS learned that Ondrak has engaged in a pattern and practice of filing federal returns containing patently false information. Because Ondrak typically prepares his clients’ personal, business and payroll returns, he is able to advise his clients to shift income and expenses to their corporate entities for the sole purpose of erroneously reducing tax liability and to mask his fraudulent activities. Ondrak uses his clients’ corporate entities to illegally reduce his clients’ income and to inflate their deductions by improperly deducting personal expenses, claiming fictitious expenses and by creating sham transactions between shareholders and corporations with little or no factual basis and without his clients’ full knowledge or understanding.

12. The IRS investigation revealed that Ondrak repeatedly prepared and filed, and continues to prepare and file, erroneous individual, corporate and partnership returns on behalf of his clients claiming false, inflated and duplicitous business deductions even though his clients have reported to him that their returns were being examined by the IRS.

13. Ondrak directs and coordinates all aspects of the preparation and filing of his clients’ tax returns and is solely responsible for the fraudulent schemes.

Specific Examples of Ondrak's Malfeasance

14. As discussed above, Ondrak typically prepares his clients' personal, business and payroll returns. When preparing these returns, Ondrak routinely shifts income and expenses between related parties (i.e., between a client's individual return and the return for the client's business entity) to fraudulently understate the tax liability of both parties. Ondrak attempts to disguise the movement of income and expenses from one return to another by creating fictitious or overstated deductions to reduce his clients' reported tax liability by: (i) creating excessive and/or sham rental payments; (ii) creating sham management fees; or (iii) deducting his clients' personal expenses on the return for their corporate entity. For example:

- a. Ondrak prepared the 2007 federal income tax return for Frontier Home Medical ("FHM"), a C-Corporation owned by Greg Cornelius of Cozad, Nebraska. When preparing the corporate return for FHM, Ondrak created an adjusting journal entry in the amount of \$800,000 for fictitious "management fees" purportedly owed by FHM to Debra Cornelius Physical Therapy, PC, an S-Corporation owned by the wife of Greg Cornelius. Ondrak then directed Greg Cornelius to have FHM pay Debra Cornelius Physical Therapy \$800,000 to support a corresponding fraudulent deduction on FHM's return that reduced its taxable income to \$105,350. Debra Cornelius Physical Therapy provided no management service to FHM. When Mr. Cornelius subsequently consulted his attorney about the \$800,000 "management fee" that Ondrak had invented, he was advised that it was likely fraudulent and that he should obtain a second opinion from a different accountant. The IRS disallowed the bogus deduction in full.
- b. Ondrak prepared the 2005 and 2006 individual and business federal income tax returns for Scott McPheeters of Gothenburg, Nebraska. In order to generate bogus deductions for McPheeters' business, SPMC Land Co., Ondrak directed McPheeters to form 4 new sham corporations, one for each of his 4 minor children, each of whom would have a controlling interest in their respective corporation. Ondrak then directed McPheeters to have SPMC pay each of the newly formed sham corporations \$50,000 in bogus "management fees" in order to generate a corresponding fraudulent deduction

on SPMC's corporate return to reduce its tax liability. The IRS disallowed the bogus deductions in full.

- c. Ondrak prepared the 2004, 2005 and 2006 federal income tax returns for Daniel McClenahan DDS, PC, a business owned by dentist Dr. Daniel McClenahan of Overton, Nebraska. Ondrak claimed several fraudulent non-deductible items as deductions on these corporate returns for, among other things, the cost of personal clothing, amounts paid for country club dues, a fine for a speeding ticket, "cash Christmas gifts" purportedly paid to Dr. McClenahan's employees, insurance payments on McClenahan family vehicles, repair costs for family vehicles and tens of thousands of dollars in "wages" and "contract labor payments" purportedly paid to Dr. McClenahan's son, Danny McClenahan, during a time when Danny was in college over one hundred miles from Overton and there was no evidence of any services being rendered by Danny McClenahan to the business. The IRS disallowed these deductions in full.

15. Ondrak's extensive involvement in masterminding and implementing the aforementioned fraudulent schemes to reduce his clients' reported tax liability is further evidenced by a December 27, 2006 letter he sent to Floyd Wahlgren, an Ondrak client. Ondrak's letter explicitly directs Mr. Wahlgren to pay several corporations he owned \$100,000 each for purported "contract labor" and "consulting fees" totaling \$600,000, without any specified basis for doing so, and when no "contract labor" or "consulting" was performed. Ondrak's letter further directs "[a]ll of these transactions need paid prior to December 31, 2006." These bogus payments were then used by Ondrak to create fraudulent deductions on one or more of the federal income tax returns for Mr. Wahlgren's businesses. All of this was done by Ondrak without ever discussing the bogus deductions with Mr. Wahlgren. The IRS disallowed these deductions.

16. Ondrak also engages in the fraudulent manipulation of his clients' income and compensation to reduce his clients' reported employment and income tax liability. Ondrak typically

advises his small-business clients to pay little or no wages to themselves personally, but instead to receive their “compensation” through other sources, such as paying themselves dividends from their corporate entities or receiving excessive rent payments from personally owned buildings rented by their corporate entities. For example:

- a. Ondrak prepared the 2004, 2005 and 2006 federal income tax and employment returns for Plum Creek Surgery, PC (“PCS”), a business owned by Kerry Buser of Lexington, Nebraska. Buser was the sole shareholder of PCS, which provided general surgery services to patients. To reduce PCS’s reported employment tax liability, Ondrak substantially understated the wages paid by PCS to Dr. Buser by several hundred thousand dollars per year, and instead fraudulently classified the compensation as “dividends” that Dr. Buser received as the sole shareholder of PCS. The IRS found that Ondrak understated the salary of Dr. Buser by \$904,238 for the 2004 - 2006 tax years, resulting in a substantial tax deficiency.
- b. Similarly, Ondrak prepared the 2004 returns for Nebraska Land & Cattle Agency, Inc. (“NLCA”), a business owned by Richard and Barbara Dawson of Elwood, Nebraska. The Dawsons were the sole shareholders and employees of NLCA, which provided brokerage services for buying and selling farm and ranch property. To reduce NLCA’s reported employment tax liability, Ondrak understated the salary paid by the business to the Dawsons (Richard was reported as receiving only \$12,000 per year and Barbara purportedly was not paid at all), and instead fraudulently listed the majority of the compensation they received as “dividends” or “distributions” as the sole shareholders of NLCA. The IRS found that Ondrak understated the salaries of the Dawsons by \$157,818, resulting in a tax deficiency of tens of thousands of dollars.
- c. Ondrak prepared the 2004, 2005 and 2006 federal tax returns for Daniel McClenahan DDS, PC, a business owned by dentist Dr. Daniel McClenahan of Overton, Nebraska. Ondrak understated Dr. McClenahan’s salary by creating bogus W-2s reporting a salary of only \$18,000 a year for performing the services of a dentist. To offset the understated salary, Ondrak then created a series of excessive rent payments on buildings personally owned by Dr. McClenahan and rented to the corporate entity Daniel McClenahan DDS. The excessive rent payments were, in reality, a fraudulent scheme devised by Ondrak to understate Dr. McClenahan’s salary to reduce his income and employment tax liability and still maintain his standard of living

through “rent” payments that were deducted on one or more of Dr. McClenahan’s corporate returns. During an audit, the IRS adjusted Dr. McClenahan’s salary to \$70,000 a year and disallowed the deductions for a large portion of the excessive rent payments created by Ondrak.

17. Ondrak also repeatedly has filed amended tax returns for his clients, not to correct errors on the original returns, but solely to use fraudulent entries to reduce the reported tax liability of his clients. Ondrak filed these amended returns on behalf of clients to, among other things, fraudulently reclassify the sale of property to exclude a gain, fraudulently increase the basis of assets sold to decrease his client’s reported income, and to fraudulently increase expense deductions to a point where his client owed no taxes. For example:

- a. In or about 2005, Ondrak was hired to prepare the individual and corporate returns of William and Valerie Geiger of Cozad, Nebraska. Prior to 2005, the Geigers used a different tax preparer. After Ondrak was hired by the Geigers, he amended their 2004 personal tax return to fraudulently remove gain from the sale of a vacation property that was sold by the Geigers. On the original return, the sale of the vacation property was correctly reported as a capital gain by the original preparer. To fraudulently reduce the Geigers’ 2004 tax liability, Ondrak filed an amended return in October 2005 fraudulently reclassifying the transaction as the sale of a personal residence and excluding all of the capital gains under I.R.C. § 121. A second vacation home is ineligible for this exclusion.
- b. Similarly, Ondrak was hired to prepare the individual and corporate federal tax returns of Gary and Kathryn Enochs of Overton, Nebraska. In October 2006, Ondrak amended the Enochs’ 2004 individual federal income tax return to erroneously increase the basis of property sold by the Enochs in tax year 2004. The amended return that Ondrak prepared increased the basis in the property by nearly \$100,000, thereby reducing the couple’s capital gains from \$312,000 on the original return to \$219,931 on the amended return. Ondrak increased the cost basis by citing, among other things, \$50,000 in fabricated “improvements” to the property. In fact, there were no new improvements to the property that were not already listed on the schedule filed in 2004. The Enochs did not know what the \$50,000 in fabricated “improvements” was supposed to represent. The IRS found that the amended return filed by Ondrak understated the Enochs’ capital gains by \$73,455.

- c. In or about 2007, Ondrak was hired by Daniel Nelson of Bertrand, Nebraska to prepare his federal income tax returns. After Ondrak was hired, he amended Nelson's 2003 tax return, which was prepared and filed by a different tax preparer, to increase Nelson's farm expenses by \$220,000 in an attempt to fraudulently eliminate the \$17,354 in self-employment taxes that Nelson owed for tax year 2003. The IRS determined that the farm expenses in the amended return were bogus and disallowed the claim in its entirety.

Ondrak Paid the Fraud Penalty For Preparing and Filing Fraudulent Returns Related To His Own Accounting Business

18. Ondrak has been equally fraudulent with respect to his own federal tax returns. Specifically, he has fraudulently manipulated wages and compensation within his own accounting business to distort income and reduce his own reported employment tax liability.

19. In 2004 Ondrak created Automated Financial Services ("AFS"), a sham S-Corporation solely controlled by him, that Ondrak used to manipulate the internal records and payroll of his accounting business in order to fraudulently reduce his own tax liability. Specifically, Ondrak used AFS to reduce the reported taxable wages paid to his employees by reclassifying a percentage of his employees' salary as distributions from AFS.

20. For example, under this scheme Ondrak paid a former employee Deborah Haseloh a salary of \$29,900 in 2004, which Ondrak reported as income on her W-2. However, Ondrak also paid Ms. Haseloh \$22,252 in "distributions" from AFS that same year that was, in reality, wages for work she performed for Ondrak. Similarly, Ondrak paid another former employee Cheryl Luft a salary of \$29,900 in 2004, which Ondrak reported as income on her W-2. However, Ondrak also paid Ms. Luft \$22,252 in "distributions" from AFS that same year that also was, in reality, wages for work she performed for Ondrak. Moreover, not only did Ondrak misclassify a portion of

Haseloh and Luft's wages as "distributions," he also failed to include the amount of those "distributions" as income to Haseloh and Luft on their corresponding W-2s.

21. Ondrak's fraudulent scheme allowed him to use AFS to misclassify a portion of the normal wage income of his employees as "distributions" from AFS to fraudulently reduce his employment tax liability. Based on this clearly fraudulent conduct, the IRS assessed the fraud penalty, which Ondrak subsequently paid in August of 2007 for Haseloh in the amount of \$4,362.50 and Luft in the amount of \$3,682.50.

Continual and Repeated Nature of Ondrak's Fraudulent Conduct

22. The scope of Ondrak's conduct is wide-ranging. The IRS conservatively estimates that in the past four years, Ondrak has prepared several thousand tax returns on behalf of individuals, corporations and partnerships.

23. The various schemes described in paragraphs 11 through 17 are not the first time that Ondrak has violated the Internal Revenue Code. As described in paragraphs 18-21, Ondrak paid two fraud penalties in 2007 for fraudulently avoiding employment taxes by improperly paying employee wages through distributions from an S-Corporation.

24. Moreover, it does not appear that Ondrak has meaningfully curtailed his improper conduct, even with increased IRS scrutiny of his activities in the past year. Ondrak was aware of the IRS's investigation of his fraudulent activities during the 2007 filing season. Yet, Ondrak still prepared individual, corporate and partnership returns that fraudulently understated income and/or misclassified compensation so as to avoid or substantially reduce clients' employment taxes, claimed false or inflated business deductions, deducted personal items on corporate and partnership returns and created sham transactions between related parties.

Harm to the United States

25. The tax-fraud schemes used by Ondrak harm the Government by fraudulently reducing his clients' reported tax liabilities.

26. The magnitude of lost tax revenues caused by Ondrak's fraudulent conduct is enormous. After examining 400 returns, the IRS determined the average loss per return to be \$6,875. If the remainder of the returns prepared by Ondrak since 2004 reflect similar tax deficiencies, the IRS projects that the total tax loss to the Government could be in the tens of millions of dollars.

27. Putting aside the immense financial loss to the Government from Ondrak's fraudulent practices, the IRS also is specifically harmed by such improper conduct because the IRS must continually devote scarce resources to detecting and examining inaccurate returns prepared and filed by Ondrak on behalf of his clients, and to attempting to assess and collect unpaid taxes.

28. Ondrak's schemes have caused substantial harm to the Government by helping taxpayers evade taxes and by obstructing the IRS's efforts to administer the federal tax laws.

29. The extensive involvement of Ondrak in these elaborate tax-fraud schemes over the past several years, the high number of returns prepared by him containing improper deductions (along with the corresponding high amounts of unpaid taxes), and his persistence in claiming improper deductions even after becoming aware of increased IRS scrutiny of his conduct all establish that the misconduct described in this complaint or other similar misconduct is likely to recur unless Ondrak is permanently enjoined from preparing tax returns.

COUNT I: Injunction Under I.R.C. § 7407 For Violation of I.R.C. § 6694

30. The United States incorporates by reference the allegations in paragraphs 1-29.

31. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from specified misconduct (which is described in I.R.C. §§ 6694 and 6695, and I.R.C. § 7407 itself) if the court finds that the preparer has engaged in such conduct and injunctive relief is appropriate to prevent the recurrence of such conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (i.e., prohibiting only specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a federal income tax return preparer.

32. For returns prepared on or before May 25, 2007, I.R.C. § 6694(a) provided that a tax return preparer is subject to penalty if he prepares a return or claim for refund understating a customer's tax liability based on a position for which there is no realistic possibility of the position being sustained on the merits, and the preparer knew or should have known of the position.

33. For returns prepared after May 25, 2007, I.R.C. § 6694(a) provides that a tax return preparer is subject to penalty if he prepares a return or claim for refund understating a customer's tax liability based on a position for which there was not a reasonable belief that the position would more likely than not be sustained on the merits, and the preparer knew or should have known of the position.

34. I.R.C. § 6694(b) penalizes a tax return preparer for a willful attempt in any manner to understate the liability for tax on the return or claim, and for a reckless or intentional disregard of internal revenue rules or regulations.

35. I.R.C. § 7701(a)(36) defines a “tax return preparer” as a person who prepares for compensation or who employs one or more persons to prepare for compensation, any return or a substantial portion thereof.

36. Ondrak is a tax return preparer.

37. Ondrak willfully prepared tax returns for his clients that he knew contained false and grossly inflated claims. He knew that these false deductions, credits, and exemptions would understate his clients’ tax liability.

38. Ondrak knew or should have known that the returns he prepared for his clients contained claims of which he knew or should have known and for which there was no realistic possibility of being sustained on the merits (for returns prepared prior to and including May 25, 2007) or for which there could not have been a reasonable belief that the position would more likely than not be sustained on the merits (for returns prepared after May 25, 2007). Ondrak fabricated these claims and their supporting documentation. There could be no possibility that these false deductions, credits, and exemptions would be sustained on the merits because they were fabricated.

39. Preparing federal income tax returns that willfully understate the taxpayer’s liability and that contain unrealistic or unreasonable and frivolous positions subjects Ondrak to penalty under I.R.C. § 6694.

40. I.R.C. § 7407 authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under I.R.C. § 6695.

41. Anything less than a complete bar on the preparing of returns is unlikely to stop Ondrak. Ondrak’s record of deceit and fraud shows there is a high likelihood that he would continue his schemes if he is merely barred from filing improper returns.

COUNT II: Injunction Under I.R.C. § 7408 For Violations of I.R.C. §§ 6700 and 6701

42. The United States incorporates by reference the allegations in paragraphs 1 through 41.

43. I.R.C. § 7408(a) authorizes a district court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 from engaging in further such conduct if injunctive relief is appropriate to prevent recurrence of the conduct.

44. I.R.C. § 6700 imposes a civil penalty on any person who organizes or participates in the organization or sale of any plan or arrangement and who makes or furnishes or causes another to make or furnish a statement with respect to the allowance of a tax deduction or credit or other tax benefit that the person knows or has reason to know is false or fraudulent.

45. I.R.C. § 6701 imposes a civil penalty on any person who aids or assists in, procures, or advises with respect to the preparation or presentation of any portion of a federal tax return, refund claim, or other document, knowing or having reason to believe that such document will be used in connection with any material matter under the tax laws and knowing that such portion, if used, would result in an understatement of another person's tax liability.

46. Ondrak has violated I.R.C. §§ 6700 and 6701 by preparing tax returns for others that he knew or had reason to believe would understate his clients' true tax liabilities and that contained deductions, exemptions, and credits that he knew were false or fraudulent.

47. Ondrak had reason to believe that his conduct, as described above, is illegal. Ondrak has been preparing tax returns since at least 1993. The IRS has audited hundreds of tax returns that Ondrak prepared, and determined that these returns contained fraudulent deductions, credits, and

exemptions. Indeed, Ondrak paid two fraud penalties to the IRS because of his fraudulent tax schemes.

48. Ondrak has demonstrated his intention to continue to engage in such conduct and in other conduct subject to penalty under the Internal Revenue Code. He has repeatedly prepared or assisted in the preparation of income tax returns in a manner that may be penalized under I.R.C. §§ 6700 and 6701.

49. An injunction against Ondrak is necessary and appropriate to prevent the recurrence of their conduct subjecting them to penalty under I.R.C. §§ 6700 and 6701 and for engaging in any other conduct subject to penalty under the Internal Revenue Code.

COUNT III: Injunction Under I.R.C. § 7402 for Unlawful Interference with the Enforcement of the Internal Revenue Laws

50. The United States incorporates by reference the allegations in paragraphs 1 through 49.

51. I.R.C. §7402(a) authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

52. Ondrak, acting individually and through Don Ondrak PC, has engaged in conduct, described above, that substantially interferes with the enforcement of the internal revenue laws.

53. An injunction prohibiting Ondrak from preparing or assisting in the preparation of tax returns is needed to stop the filing of fraudulent tax returns and to prohibit him from otherwise interfering with the proper administration and enforcement of the internal revenue laws.

54. If Ondrak is not enjoined, he is likely to continue to interfere with the enforcement of the internal revenue laws. Ondrak has continually and repeatedly engaged in illegal conduct over

several years. Ondrak, individually and through Don Ondrak PC, sent and caused to be sent false and fraudulent tax returns and other documents to the Internal Revenue Service. Ondrak has continued to prepare fraudulent income tax returns and has engaged in conduct subject to penalty under I.R.C. § 6701.

55. If Ondrak is not enjoined, the United States will suffer irreparable harm from the underpayment of tax liability, the exhaustion of resources to enforce the internal revenue laws, and because the losses caused by Ondrak's actions will continue to increase.

56. While the United States will suffer substantial, irreparable injury if Ondrak is not enjoined, Ondrak will not be greatly harmed by being compelled to obey the law.

57. The public interest would be advanced by enjoining Ondrak because an injunction will stop his illegal conduct and the harm that conduct is causing the United States Treasury and the public.

58. An injunction under I.R.C. § 7402 is necessary and appropriate, and the United States is entitled to injunction relief under I.R.C. § 7402. The injunction should bar Ondrak, and anyone acting in concert with him, from preparing or filing tax returns for others, representing scheme participants before the IRS or in the courts, and from otherwise engaging in conduct that interferes with the proper administration of the internal revenue laws.

Relief Sought

WHEREFORE, plaintiff the United States of America respectfully prays for the following relief:

A. That the Court find that Ondrak has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and conduct that may be enjoined under I.R.C. § 7407(b)(1)(D), and that injunctive relief is appropriate under I.R.C. § 7407 to prevent Ondrak and anyone acting in concert with him from acting as a tax return preparer;

B. That the Court find that Ondrak has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, that such conduct interferes with the administration and enforcement of the internal revenue laws, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent Ondrak and anyone acting in concert with him from engaging in any further such conduct or other conduct subject to penalty under the Internal Revenue Code;

C. That the Court find that Ondrak has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against Ondrak and his representatives, agents, servants, employees, attorneys, and anyone acting in concert with them is appropriate to prevent the recurrence of that conduct under I.R.C. § 7402(a);

D. That the Court, under I.R.C. §§ 7402, 7408, and 7407, enter a permanent injunction prohibiting Ondrak, as well as his agents, servants, employees, attorneys, and anyone in active concert or participation with him, from directly or indirectly:

1. Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself;

2. Appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
3. Preparing or filing, or assisting in the preparation or filing of tax returns or other related forms or documents for others;
4. Filing (or helping or soliciting others to file) tax returns for others through the Internal Revenue Service E-File program or any other IRS service or program by which one electronically files tax returns;
5. Seeking permission or authorization (or helping or soliciting others to seek permission or authorization) to file tax returns for others through the Internal Revenue Service E-File program or any other IRS service or program by which one electronically files tax returns;
6. Instructing or advising customers, or assisting in the instruction or advice to customers to understate their federal tax liabilities;
7. Engaging in any activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, 6701, or any other penalty provision in the Internal Revenue Code;
8. Engaging in conduct designed or intended to, or having the effect of, obstructing or delaying any Internal Revenue Service investigation or audit; and
9. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Ondrak to produce to counsel for the United States a list identifying (by name, address, e-mail address, phone number, and Social Security or other tax identification number) all of the customers who, for any of the tax years 2003 to the present, have used the tax preparation services of Ondrak or his business as it is known under any of its names, including Don Ondrak PC;

F. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Ondrak at his own expense to contact by mail (or by e-mail, if a mailing address is unknown) all of his customers

related to any of his tax preparation businesses and inform those individuals of the Court's findings concerning the falsity of his prior representations and attach a copy of the permanent injunction, and to file with the Court, within 20 days of the date on which the permanent injunction is entered, a certification signed under penalty of perjury that they have done so;

G. That the Court allow the United States full post-judgment discovery to monitor compliance with the injunction;

H. That the Court retain jurisdiction over this action for purpose of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

I. That the Court grant the United States such other and further relief as the Court deems appropriate.

TRIAL

The United States of America hereby requests that trial of the above and foregoing action be held in Lincoln, Nebraska, and that the case be calendared accordingly.

Dated: September 21, 2009

Respectfully submitted,

Joe W. Stecher
United States Attorney

s/ Laurie Kelly

LAURIE KELLY
MA Bar No. 557575
Assistant United States Attorney
District of Nebraska
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Telephone: 402-661-3700
Fax: 402-661-3081
E-Mail: laurie.kelly@usdoj.gov

s/ Gregory S. Seador

GREGORY S. SEADOR
D.C. Bar No. 478236
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Telephone: (202) 307-2182
Facsimile: (202) 514-6770
E-Mail: gregory.s.seador@usdoj.gov

Attorneys for the United States